85-1001 (3)

Supreme Court, U.S.
FILED
DEC 9 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
1985 Term

Wayne Louis Bohn and Sharon Anne Bohn, individually and as Natural Guardians and Guardians Ad Litem, Bradley L. Bohn, a minor and Wayne Arthur Bohn,

Plaintiffs-Petitioners,

vs.

County of Dakota; Shirley L. Utzinger, Director of Social Services, Dakota County Human Services Department; Beth Welshons, Worker, Child Protection Assessment Unit; Anthony A. Bibus, Supervisor, Child Protection Assessment Unit; Kenneth Malvey, Assistant County Attorney; Robert F. Carolan, County Attorney; Dakota County Human Services Board; John S. Voss, Chairman, Joseph A. Harris, Gerald E. Hollenkamp, Steven Loeding, and Russell L. Streefland,

Defendants-Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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APPENDIX -- PART II

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626.556 REPORTING OF MALTREATMENT OF MINORS

Subdivision 1. Public Policy. The legislature hereby declares that the public policy of this state is to protect children whose health or welfare may be jeopardized through physical abuse, neglect or sexual abuse; to strengthen the family and make the home safe for children through improvement of parental and guardian capacity for responsible child care; and to provide a safe temporary or permanent home environment for physically or sexually abused children.

In addition, it is the policy of this state to require the reporting of suspected neglect, physical or sexual abuse of children; to provide for the voluntary reporting of abuse or neglect of children; to require the investigation

of such reports; and to provide protective and counseling services in appropriate cases.

Subd. 2. Definitions. As used in this section, the following terms have the meanings given them unless the specific content indicates otherwise:

(a) "Sexual abuse" means the subjection by the child's parents, guardian or person responsible for the child's care, to any act which constitutes a violation of sections 609.342, 609.343, 609.344 or 609.345, or sections 609.364 to 609.3644. Sexual abuse also includes any act which involves a minor which constitutes a violation of sections 609.321 to 609.324 or 617.246.

(b) "Neglect" means failure by a parent, guardian or other person responsible for a child's care to supply a child with necessary food, clothing,

shelter or medical care when reasonably able to do so or failure to protect a child from conditions or actions which imminently and seriously endanger the child's physical or mental health when reasonably able to do so. Nothing in this section shall be construed to mean that a child is neglected solely because the child's parent, guardian or other person responsible for his care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child.

(c) "Physical abuse" means"

(i) Any physical injury inflicted by a parent, guardian or other person responsible for the child's care on a child other than by accidental means; or

(ii) Any physical injury that cannot reasonably be explained by the history of injuries provided by a parent, guardian

or other person responsible for the child's care.

(d) "Report" means any report received by the local welfare agency, police department or county sheriff pursuant to this section.

(e) "Facility" means a day care facility or a residential facility as defined in section 245.782.

(f) "Operator" means an operator or agency as defined in section 245.7822.

Subd. 3. Persons mandated to report. A professional or his delegate who is engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, or law enforcement who has knowledge of or reasonable cause to believe a child is being neglected or physically or sexually abused shall immediately report the

information to the local welfare agency, police department or the county sheriff. The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency. The local welfare agency, upon receiving a report, shall immediately notify the local police department or the county sheriff. Nothing in this subdivision shall be construed to require more than one report from any institution, facility, school or agency.

Any person not required to report under the provisions of this subdivision may voluntarily report to the local welfare agency, police department or the county sheriff if he has knowledge of or reasonable cause to believe a child is being neglected or subjected to physical or sexual abuse. The police department or the county sheriff, upon receiving a

report, shall immediately notify the local welfare agency.

Any person who makes a report shall, upon request to the local welfare agency, receive a concise summary of the disposition of the report, unless release would be detrimental to the best interests of the child.

Subd. 4. Immunity from liability. Any person, including those voluntarily making reports and those required to make reports under subdivision 3, participating in good faith and exercising due care in the making of a report pursuant to this section shall have immunity from any liability, civil or criminal, that otherwise might result by reason of his action.

Subd. 5. Falsified reports. Any person who willfully or recklessly makes a false report under the provisions of

this section shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury.

Subd. 6. Failure to report. Any person required by ths section to report suspected physical or sexual child abuse or neglect who willfully fails to do so shall be guilty of a misdemeanor.

Subd. 7. Report. An oral report shall be made immediately by telephone or otherwise. An oral report made by a person required under subdivision 3 to report shall be followed as soon as possible by a report in writing to the appropriate police department, the county sheriff or local welfare agency. Any report shall be of sufficient content to identify the child, the parent, guardian, or other person responsible for his care,

the nature and extent of the child's injuries and the name and address of the reporter. Written reports received by a police department or the county sheriff shall be forwarded immediately to the local welfare agency. The police department or the county sheriff may keep copies of reports received by them. Copies of written reports received by a local welfare department shall be forwarded immediately to the local police department or the county sheriff.

A written copy of a report maintained by personnel of agencies other than welfare or law enforcement agencies, which are subject to chapter 13 shall be confidential. An individual subject of the report may obtain access to the original report as provided by subdivision 11.

Subd. 8. Evidence not privileged. No

evidence regarding the child's injuries shall be excluded in any proceeding arising out of the alleged neglect or physical or sexual abuse on the grounds of either a physician-patient or husband-wife privilege.

Subd. 9. Mandatory reporting to a medical examiner or coroner. When a person required to report under the provisions of subdivison 3 has reasonable cause to believe a child has died as a result of neglect or physical or sexual abuse, he shall report that information to the appropriate medical examiner or coroner instead of the local welfare agency, police department or county sheriff. Medical examiners or coroners shall notify the local welfare agency, police department or county sheriff. Medical examiners or coroners shall notify the local welfare agency or police

department or county sheriff in instances in which they believe that the child has died as a result of neglect or physical or sexual abuse. The medical examiner or coroner shall complete an investigation as soon as feasible and report the findings to the policy department or county sheriff and the local welfare agency.

Subd. 10. Duties of local welfare agency upon receipt of a report. The local welfare agency shall immediately investigate and offer protective social services for purposes of preventing further abuses, safeguarding and enhancing the welfare of the abused or neglected minor, and preserving family life whenever possible. When necessary the local welfare agency shall seek authority to remove the child from the custody of his parent, guardian or adult with whom

he is living. In performing any of these duties, the local welfare agency shall maintain appropriate records.

Subd. 11. Records. All records maintained by a local welfare agency under this section, including any written reports filed under subdivision 7, shall be private data on individuals, except insofar as copies of reports are required by subdivision 7 to be sent to the local police department or the county sheriff. Report records maintained by any police department or the county sheriff shall be private data on individuals except the reports shall be made available to the investigating, petitioning, or prosecuting authority. The welfare board shall make available to the investigating, petitioning, or prosecuting authority any records which contain information relating to a specific incident of

neglect or abuse which is under investigation, petition, or prosecution and information relating to any prior incidents of neglect or abuse involving any of the same persons. The records shall be collected and maintained in accordance with the provisions of chapter 13. An individual subject of a record shall have access to the record in accordance with those sections, except that the name of the reporter shall be confidential while the report is under investigation. After the investigation is completed, the name of the reporter shall be confidential but shall be accessible to the individual subject of the record uon court order.

Records maintained by local welfare agencies, the police department or county sheriff under this section shall be destroyed as described in clauses (a) to

(c):

(a) If upon investigation a report is found to be unsubstantiated, notice of intent to destroy records of the report shall be mailed to the individual subject of the report. At the subject's request the records shall be maintained as private data. If no request from the subject is received within 30 days of mailing the notice of intent to destroy, the records shall be destroyed.

(b) All records relating to reports which, upon investigation, are found to be substantiated shall be destroyed seven years after the date of the final entry in the case record.

(c) All records of reports which, upon initial investigation, cannot be substantiated or disproved to the satisfaction of the local welfare agency, local police department or county sheriff may

be kept for a period of one year. If the local welfare agency, local police department or county sheriff is unable to substantiate the report within that period, each agency unable to substantiate the report shall destroy its records relating to the report in he manner provided by clause (a).

Subd. 12. Duties of facility operators. Any operator, or volunteer worker at any facility who intentionally neglects, physically abuses, or sexually abuses any child in the care of that facility may be charged with a violation of section 609.23. Any operator of a facility who knowingly permits conditions to exist which result in neglect, physical abuse, or sexual abuse or a child in the care of that facility may be charged with a violation of section 609.23.

Subd. 13. Application of data practices act. The classification of reports and records created or maintained for the purposes of this section shall be determined as provided by this section, notwithstanding any other classifications established by chapter 13.

13.04 RIGHTS OF SUBJECTS OF DATA

Subdivision 1. Type of data. The rights of individuals on whom the data is stored or to be stored shall be as set forth in this section.

Subd. 2. Information required to be given individual. An individual asked to supply private or confidential data concerning himself shall be informed of: (a) the purpose and intended use of the requested data within the collecting state agency, political subdivision or statewide system; (b) whether he may

refuse or is legally required to supply the requested data; (c) any known consequence arising from his supplying or refusing to supply private or confidential data; and (d) the identity of other persons or entities authorized by state or federal law to receive the data; and (d) the identity of other persons or entities authorized by state or federal law to receive the data. This requirement shall not apply when an individual is asked to supply investigative data to a law enforcement officer.

Subd. 3. Access to data by individual. Upon request to a responsible authority, an individual shall be informed whether he is the subject of stored data on individuals, and whether it is classified as public, private or confidential. Upon his further request, an individual who is the subject of stored private or public

data on individuals shall be shown the data without any charge to him and, if he desires, shall be informed of the content and meaning of that data. After an individual has been shown the private data and informed of its meaning, the data need not be disclosed to him for six months thereafter unless a dispute or action pursuant to his section is pending or additional data on the individual has been collected or created. The responsible authority shall provide copies of the private or public data upon request by the individual subject of the data. The responsible authority may require the requesting person to pay the actual costs of making, certifying, and compiling the copies.

The responsible authority shall comply immediately, if possible, with any request made pursuant to this subdivi-

sion, or within five days of the date of the request, excluding Saturdays, Sundays and legal holidays, if immediate compliance is not possible. If he cannot comply with the request within that time, he shall so inform the individual, and may have an additional five days within which to comply with the request, excluding Saturdays, Sundays and legal holidays.

MINNESOTA STATUTES §§14.57 to 14.61

14.57. INITIATION; DECISION

An agency shall initiate a contested case proceeding when one is required by law. Unless otherwise provided by law, an agency shall decide a contested case only in accordance with the contested case procdures of the administrative procedure act.

14.58. NOTICE AND HEARING

In any contested case all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time, place and issues involved, but if, by reason of the nature of the case, the issues cannot by fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable, and opportunity shall be affored all parties to present evidence and argument with respect thereto. Prior to assignment of a case to a hearing examiner as provided by sections 14.48 to 14.56, all papers shall be filed with the agency. Subsequent to assignment of the case, the agency shall certify the official record to the office of administrative hearings, and thereafter, all papers shall be filed with

that office. The office of administrative hearings shall maintain the official record which shall include subsesquent filing, testimony and exhibits. All filings are deemed effective upon receipt. The record shall contain a written transcript of the hearing only if preparation of a transcript is requested by the agency, a party, or the chief hearing examiner. The agency or party requesting a transcript shall bear the costs of preparation. When the chief hearing examiner requests preparation of the transcript, the agency shall bear the cost of preparation. Upon issuance of the hearing examiner's report, the official record shall be certified to the agency.

14.59 INFORMAL DISPOSITION

Informal disposition may also be made of any contested case by stipulation,

agreed settlement, consent order or default.

14.60 EVIDENCE IN CONTESTED CASE HEARINGS

Subdivision 1. Admissibility. In contested cases agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. They may exclude incompetent, irrelevant, immaterial and repetitious evidence.

Subdivision 2. Made part of record. All evidence, including records and documents containing information classified by law as not public, in the possession of the agency of which it desires to avail itself or which is offered into evidence by a party to a contested case proceeding, shall be made

a part of the hearing record of the case. No factual information or evidence shall be considered in the determination of the case unless it is part of the record. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. When the hearing record contains information which is not public, the hearing examiner or the agency may conduct a closed hearing to discuss the information, issue necessary protective orders, and seal all or part of the hearing record.

Subd. 3. Cross-examination of witnesses. Every party or agency shall have the right of cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.

Subd. 4. Official notice. Agencies may take notice of judicially cognizable facts and in addition may take notice of

general, technical, or scientific facts within their specialized knowledge. Parties shall be notified in writing either before or during hearing, or by reference in preliminary reports or otherwise, or by oral statement in the record, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. Agencies may utilize their experience, technical competence, and specialized knowledge in the evaluation of the evidence in the hearing record.

14.61 AGENCY DECISION IN CONTESTED CASE

In all contested cases the decision of the officials of the agency who are to render the final decision shall not be made until the report of the hearing examiner as required by sections 14.48 to 14.56 has been made available to parties to the proceeding for at least ten days

and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of the officials who are to render the decision.

14.62 DECISIONS, ORDERS

Subdivision 1. Writing required. Every decision and order rendered by an agency in a contested case shall be in writing, shall be based on the record and shall include the agency's findings of fact and conclusions on all material issues. A copy of the decision and order shall be served upon each party or his representative and the hearing examiner by first class mail.

Subd. 2. Failure to make decision. Unless otherwise provided by law, if an agency fails to render a decision and order in a contested case within 90 days after the submission of the final hearing

examiner report and subsequenty exceptions and arguments under section 14.61, if any, any party may petition the court of appeals for an order requiring the agency to render a decision and order on the contested case within such time as the court determines to be appropriate. The order shall be issued unless the agency shows that further delay is reasonable.

MINNESOTA STATUTES §§14.63 to 14.70

14.63. APPLICATION

Any person aggrieved by a final decision in a contested case is entitled to judicial review of the decision under the provisions of section 14.63 to 14.68, but nothing in sections 14.63 to 14.68 shall be deemed to prevent resort to other means of review, redress, relief, or trial do novo provided by law now or

hereafter enacted. A petition by an aggrieved person for judicial review under sections 14.63 to 14.68 must be filed with the district court and served on the agency not more than 30 days after the party receives the final decision and order of the agency.

14.64. PETITION;SERVICE

Proceedings for review under sections 14.63 to 14.68 shall be instituted by serving a petition personally or by certified mail upon the agency and by filing the petition in the office of the clerk of district court for the county where the agency has its principal office or the county of residence of the petitioners.

In case a request for rehearing or reconsideration shall have been made within ten days after the decision and order of the agency, the 30-day period

provided in section 14.63 shall not begin to run until service of the order finally disposing of the application for rehearing or reconsideration, but nothing herein shall be construed as requiring that an application for rehearing or reconsideration be filed with and disposed of by the agency as a prerequisite to the institution of a review proceeding under sections 14.63 to 14.68.

The petition shall state the nature of the petitioner's interest, the facts showing the petitioner is aggrieved and is affected by the decision, and the ground or grounds upon which the petitioner contends that the decision should be reversed or modified. The petition may be amended by leave of court although the time for serving the petition has expired. The petition shall be entitled in the name of the person serving the

petition as petitioner and the name of the agency whose decision is sought to be reviewed as respondent. Copies of the petition shall be served, personally or by certified mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made; and for the purpose of such service the agency upon request shall certify to the petitioner the names and addresses of all such parties as disclosed by its records, which certification shall be conclusive. The agency and all parties to the proceeding before it shall have the right to participate in the proceedings for review. The court in its discretion may permit other interested parties to intervene.

Every person served with the petition

for review as provided in section 14.63 to 14.68 and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner. within 20 days after service of the petition upon such person, a notice of appearance stating his position with reference to the affirmance, vacation, reversal or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general and shall be filed, together with proof of service thereof, with the clerk of the reviewing court within ten days after such service. Service of all subsequent papers or notices in such proceedings need be made only upon the petitioner, the named respondent, the attorney general, and such other persons as have served and

filed the notice as hereir provided, or have been permitted to intervene in said proceedings as parties thereto by order of the reviewing court.

14.65 STAY OF DECISION; STAY OF OTHER APPEALS

The filing of the petition shall not stay the enforcement of the agency decision; but the agency may do so, or the reviewing court may order a stay upon such terms as it deems proper. When an appeal from a final decision is commenced under section 14.63 to 14.68 in any district court of this state, any other later appeal under sections 14.63 to 14.68 from such final decision involving the same subject matter shall be stayed until final decision of the first appeal.

14.66. TRANSMITTAL OF RECORD

Within 30 days after service of the petition, or within such further time as

the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review; but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

14.67. NEW EVIDENCE, HEARING BY AGENCY

If, before the date set for hearing, application is made to the court for leave to present additional evidence on the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to

present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and decision by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or decison.

14.68. PROCEDURE ON REVIEW

The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure, not shown in the record, testimony thereon may be taken in the court. The court shall, upon request, hear oral argument and receive written briefs. Except as otherwise provided all

proceedings shall be conducted according to the rules of civil procedure.

14.69. SCOPE OF JUDICIAL REVIEW

In a judicial review under section 14.63 to 14.68, the court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial right of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

(a) In violation of constitutional provisions; or

(b) In excess of the statutory authority or jurisdiction of the agency; or

(c) Made upon unlawful procedure; or

(d) Affected by other error of law; or

(e) Unsupported by substantial evidence in view of the entire record as submitted; or

(f) Arbitrary or capricious.

14.70. APPEALS TO SUPREME COURT

An aggrieved party, including an agency which issued a decision and order in the case, may secure a review of any final order or judgment of the district court under sections 14.63 to 14.68 by appeal to the supreme court. The appeal shall be taken in the manner provided by law for appeals from orders of judgments of the district court in other civil cases.

2 MCAR §1.215

Pursuant to Minnesota Statutes, section 15.165, subdivision 4 of the act, an individual may appeal an adverse determination of a responsible authority to the commissioner of administration.

A. The appeal shall follow the procedures established in Minnesota Statutes, chapter 15, as amended, and the rules of the Office of Administrative

Hearings relating to contested case proceedings.

B. Notice of an appeal must be submitted to the commissioner within a reasonable time of the determination made by the responsible authority pursuant to Minnesota Statutes, section 15.165, subdivision 4 of the act. For purposes of this section, "reasonable time" shall mean 180 days unless the responsible authority has provided the individual with a written statement which informs the individual of the right to appeal the determination to the commissioner. In the event this statement is provided, "reasonable time" for purposes of this section shall mean 60 days.

1. The notice shall be in writing and addressed to the Commissioner of Administration, State of Minnesota, 50 Sherburne Avenue, St. Paul, Minnesota

55155.

2. The notice shall contain the following information:

a. The name, address, and phone number, if any, of the appealing party.

b. The name of the responsible authority and the entity which he or she represents.

c. A description of the nature of the dispute, including a description of the data.

d. A description of the desired result of the appeal.

9 MCAR §2.217, Subp. 5

Subp. 5. Burden of proof. The party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard.